

**CERCLA SECTION 122(h)(1) AGREEMENT
FOR RECOVERY OF PAST RESPONSE COSTS**

IN THE MATTER OF:)	AGREEMENT FOR RECOVERY
)	OF PAST RESPONSE COSTS
Harco Property Site)	
44 Old Mill Road)	
Wilton, Connecticut)	U.S. EPA Region I
)	CERCLA Docket No. I-97-1038
Gilbert & Bennett Manufacturing)	
Company)	
SETTLING PARTY)	PROCEEDING UNDER SECTION
)	122(h)(1) OF CERCLA
)	42 U.S.C. § 9622(h)(1)

I. JURISDICTION

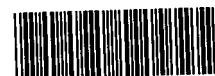
1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Director, Office of Site Remediation and Restoration by EPA Region 1 Order No. 1200, June 30, 1995.

2. This Agreement is made and entered into by EPA and the Gilbert & Bennett Manufacturing Company ("Settling Party"). The Settling Party consents to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Harco Property Site ("Site") located in Wilton, Connecticut. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. EPA's response activities included site investigation (both preliminary and final), and sampling and analysis of soil and surface water, as well as enforcement related activities, including securing access to the Site, planning response actions, oversight of work performed at the Site, and cost recovery.



5. In performing this response action, EPA incurred response costs at or in connection with the Site.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and as such, is liable for response costs incurred at or in connection with the Site.

7. The Director of the Office of Site Remediation and Restoration has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.

8. The United States has reviewed the Financial Information submitted by Settling Party to determine whether Settling Party is financially able to pay response costs incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Party has limited financial ability and is able to pay the amounts specified in Section V.

9. EPA and Settling Party desire to resolve Settling Party's alleged civil liability for Past Response Costs without litigation and without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

10. This Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of the Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Effective Date" shall mean the date upon which EPA issues written notice that the public comment period pertaining to this agreement has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

f. "Financial Information" shall mean those financial documents identified in Appendix A.

g. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

h. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

i. "Parties" or "Party" shall mean EPA and/or the Settling Party.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA has incurred at or in connection with the Site through February 28, 1997.

k. "Section" shall mean a portion of this Agreement identified by a roman numeral.

l. "Settling Party" shall mean the Gilbert & Bennett Manufacturing Company.

m. "Site" shall mean the Harco Property Site, encompassing approximately 41.1 acres, located at 44 Old Mill Road in Wilton, Fairfield County Connecticut. The Site is identified on the Town of Wilton Tax Map number 10, R-2, as Lot number 12.

n. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

12. The Settling Party shall pay a total of \$171,100 to the EPA Hazardous Substance Superfund in reimbursement of Past Response Costs, in two installments, as described below, plus an additional sum for Interest on the second installment amount, as specified in Subparagraph 12.b., below.

a. Within 30 days of the Effective Date of this Agreement, the Settling Party shall pay to the EPA Hazardous Substance Superfund the first installment amount of \$85,550 in reimbursement of Past Response Costs.

b. Within 360 days of the Effective Date of this Agreement, the Settling Party shall pay to the EPA Hazardous Substance Superfund the second installment amount of \$85,550, in reimbursement of Past Response Costs, plus an additional sum for Interest on that principal amount, which Interest, solely for the purposes of this Section V, Paragraph 12, shall be based on the interest rate specified for interest on investments of the Hazardous Substances Superfund as compounded on October 1, 1996, which interest rate on October 1, 1996 was 5.7%. Such Interest will be calculated from the Effective Date of this Agreement until the date of payment, which is the date such payment is post-marked, and added to the total payment amount. Settling Party may accelerate this payment, and Interest due on the accelerated payment shall be reduced accordingly.

13. Payments shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 01-L4, and the EPA docket number for this action, and shall be sent to:

EPA Hazardous Substance Superfund Accounting, Region 1
P.O. Box 360197M
Pittsburgh, PA 15251

14. At the time of each payment, the Settling Party shall send notice that such payment has been made to:

Cynthia A. Lewis, Enforcement Counsel
Mail Code SES
US EPA Region 1
JFK Federal Building
Boston, MA 02203

and

William F. Hanscom, Civil Investigator
Mail Code HBS
US EPA Region 1
JFK Federal Building
Boston, MA 02203

VI. FAILURE TO COMPLY WITH AGREEMENT

15. In the event that the payments required by Paragraph 12 are not made when due, Interest shall accrue on the unpaid balance through the date of payment.

16. If any amounts due to EPA under Paragraph 12 are not paid by the required date, Settling Party shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 15, \$2,000 per day such payment is late.

17. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made in accordance with Paragraphs 13 and 14.

18. Penalties shall accrue as provided above regardless of whether EPA has made a demand for payment to the Settling Party, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

19. In addition to the Interest and stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Agreement, if the Settling Party fails or refuses to comply with any term or condition of this Agreement, the Settling Party shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, the Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

20. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement.

VII. COVENANT NOT TO SUE BY EPA

21.a. Except as specifically provided in Paragraph 22 (Reservations of Rights by EPA), EPA covenants not to sue the Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Reimbursement of Response Costs) and Section VI (Failure to Comply with Agreement), Paragraphs 15 and 16. This covenant not to sue is conditioned upon the satisfactory performance by the Settling Party of its obligations under this Agreement. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to the United States by the Settling Party. If the Financial Information is subsequently determined by the United States to be misleading, false or materially inaccurate, EPA shall retain all payments made pursuant to this Agreement and the covenant not to sue shall be null and void. Any payments so retained shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Party's misleading, false or materially inaccurate information. This covenant not to sue extends only to the Settling Party and does not extend to any other person.

b. If the Settling Party disputes the United States' determination that the Financial Information is misleading, false or materially inaccurate, the Settling Party shall notify EPA in writing within ten (10) days of receipt of the United States' determination that it seeks review of the determination. Along with its written request for review, the Settling Party shall provide EPA with any documentation that is relevant to EPA's determination. Within twenty (20) days of EPA's receipt of Settling Party's request for review, EPA and the Settling Party shall meet to discuss Settling Party's objection. If, after this meeting, Settling Party continues to dispute EPA's determination, Settling Party shall have five (5) additional days to submit its position in writing to the Director of the Office of Site Remediation and Restoration. The Director of the Office of Site Remediation and Restoration shall provide a written response to the Settling Party with EPA's decision. No EPA decision made pursuant to this paragraph shall give rise to judicial review.

VIII. RESERVATIONS OF RIGHTS BY EPA

22. The covenant not to sue by EPA set forth in Paragraph 21 does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Agreement is without prejudice to, all rights against the Settling Party with respect to all other matters, including but not limited to:

- a. liability for failure of the Settling Party to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

23. Notwithstanding any other provision of this Agreement, the United States reserves, and this Agreement is without prejudice to, the right to reinstate or reopen this action, or to commence a new action, if the financial certification made by Settling Party in Paragraph 35 is misleading, false or materially inaccurate.

24. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

IX. COVENANT NOT TO SUE BY THE SETTLING PARTY

25. The Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

26. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

27. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA and the Settling Party each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

28. EPA and Settling Party agree that the actions undertaken by the Settling Party in accordance with this Agreement do not constitute an admission of any liability. The Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

29. The Parties agree that the Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs.

30. The Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 45 days prior to the initiation of such suit or claim. The Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 20 days of service of the complaint or claim upon it. In addition, the Settling Party shall notify EPA within 20 days of service or receipt of any Motion for Summary Judgment and within 20 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

31. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, the Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon

any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Paragraph 21.

XI. RETENTION OF RECORDS

32. Until 10 years after the Effective Date of this Agreement, the Settling Party shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

33. After the conclusion of the document retention period in the preceding paragraph, the Settling Party shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, the Settling party shall deliver any such records or documents to EPA in accordance with the following procedures regarding assertions of privilege.

(i) For documents, reports or other information that were not created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States, the Settling Party may assert that such documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted.

(ii) Documents, reports, or other information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States for which Settling Party claims a privilege shall be provided to EPA in redacted form to mask the privileged information only.

The Settling Party shall retain all records and documents it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute

has been resolved in the Settling Party's favor.

34. By signing this Agreement, Settling Party certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Party regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XII. CERTIFICATION

35. By Signing this Agreement, Settling Party certifies that, to the best of its knowledge and belief, it has submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Party executes this Agreement.

XIII. NOTICES AND SUBMISSIONS

36. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and the Settling Party.

As to EPA:

Cynthia A. Lewis, Esquire

CERCLA Docket No. I-97-1038

US EPA Region 1
Office of Environmental Stewardship
JFK Federal Building, SES
Boston, MA 02203

and

William F. Hanscom
Mail Code HBS
US EPA Region 1
JFK Federal Building
Boston, MA 02203

As to the Settling Party:

Richard Oriente
Director of Corporate Environmental Affairs
Gilbert & Bennett Manufacturing Company
1 North Main Street
Georgetown, Connecticut 06829

XIV. INTEGRATION/APPENDIX

37. This Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendix is attached to and incorporated into this Agreement: Appendix A, List of Financial Documents Submitted to EPA.

XV. PUBLIC COMMENT

38. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XVI. EFFECTIVE DATE

39. The Effective Date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 37 has closed and that comments

CERCLA Docket No. I-97-1038

received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By: Frank Cavatton

7/8/97
Date

f

Harley F. Laing, Director
Office of Site Remediation and Restoration
United States Environmental Protection Agency, Region 1

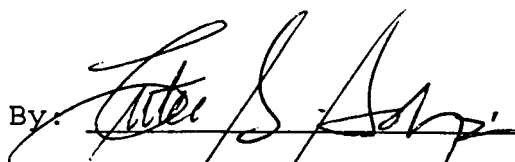
THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of CERCLA Docket No. I-97-1038, relating to the Harco Property Site in Wilton, Connecticut:

FOR SETTLING PARTY - Name: Gilbert & Bennett Manufacturing Company

Title: _____

Address: 1 North Main Street (P.O. Box 385)

Georgetown, Connecticut 06829

By:  President

6/17/97.

Name: Curtis G. Solsvig III, President Date:

APPENDIX A

List of Financial Documents Submitted to EPA

1. Gilbert & Bennett Manufacturing Company, JGH Acquisition Corporation, Consolidated Federal Income Tax Return Fiscal Year Ending September 1991.
2. Gilbert & Bennett Manufacturing Company, Financial Statement Fiscal Years Ending September 1991.
3. Gilbert & Bennett Manufacturing Company, JGH Acquisition Corporation, Consolidated Federal Income Tax Return Fiscal Year Ending September 1992.
4. Gilbert & Bennett Manufacturing Company, Financial Statement Fiscal Years Ending September 1992.
5. Gilbert & Bennett Manufacturing Company, JGH Acquisition Corporation, Consolidated Federal Income Tax Return Fiscal Year Ending September 1993.
6. Gilbert & Bennett Manufacturing Company, Financial Statement Fiscal Years Ending September 1993.
7. Gilbert & Bennett Manufacturing Company, JGH Acquisition Corporation, Consolidated Federal Income Tax Return Fiscal Year Ending September 1994.
8. Gilbert & Bennett Manufacturing Company, Financial Statement Fiscal Years Ending September 1994.
9. Gilbert & Bennett Manufacturing Company, JGH Acquisition Corporation, Consolidated Federal Income Tax Return Fiscal Year Ending September 1995.
10. Gilbert & Bennett Manufacturing Company, Financial Statement Fiscal Years Ending September 1995.
11. Gilbert & Bennett Manufacturing Company Memorandum from Scott Morrison, Corporate Controller, to Richard Oriente, Director of Environmental Affairs, dated March 25, 1997.